

### REMARKS

Claims 1-4 and 8-10 are pending in the application. Claim 1 has been amended. Support for the amendment to claim 1 can be found throughout the specification, for example, at least at page 2, line 19 through page 3, line 5; page 11, lines 25-28; and page 19, lines 10-20. No new matter has been added.

#### **Rejections under 35 U.S.C. § 112, first paragraph**

Claims 1-4 and 8-10 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. (*See* Office Action at page 3.) The Examiner states that claim 1 lacks written description because genera of Ang-2 regulatory elements that are capable of regulating gene expression are not set forth by the instant specification. According to the Examiner, the regulatory region described in the specification, SEQ ID NO: 1, meets the written description provision of 35 U.S.C. § 112, first paragraph. (*See* Office Action at page 4.) Claim 1, from which the remaining claims depend, directly or indirectly, has been amended to recite a cis-acting Ang-2 regulatory element comprising the amino acid sequence set forth in SEQ ID NO: 1, as suggested by the Examiner. Applicants submit that amended claim 1 meets the written description requirement. Thus, this rejection should be withdrawn.

Claims 1-4 and 8-10 have been rejected under 35 U.S.C. § 112, first paragraph, because the specification, "...while being enabling for an isolated polynucleotide comprising (a) a first nucleic acid encoding a light-generating gene product operably linked to the Ang-2 regulatory region set forth in SEQ ID NO: 1 and (b) a second nucleic acid encoding a selectable marker, wherein said selectable marker is operably linked to a promoter that, upon expression, allows for selection of cells comprising said polynucleotide in a eukaryotic host, does not reasonably provide enablement for use of the claimed nucleic acid wherein the Ang-2 regulatory region is not operably linked to the first nucleic acid, for use of any Ang-2 regulatory element, or for use of the polynucleotide wherein the second nucleic acid is not operably linked to a promoter." (Office Action at page 5.)

Claim 1, from which the remaining claims depend, directly or indirectly, has been amended to require an isolated polynucleotide comprising a first nucleic acid encoding a light-

generating gene product operably linked to a cis-acting angiopoietin-2 (Ang-2) regulatory element, wherein said cis-acting Ang-2 regulatory element comprises the amino acid sequence set forth in SEQ ID NO: 1; and a second nucleic acid encoding a selectable marker, wherein said selectable marker is operably linked to a promoter, and wherein expression of said selectable marker allows for selection of said polynucleotide in a eukaryotic host, as suggested by the Examiner. Applicants submit that amended claim 1 meets the enablement requirement. Thus, this rejection should be withdrawn.

**CONCLUSION**

Applicants believe that the claims, as amended, are in condition for allowance. If the Examiner has any questions, the Examiner is invited to contact the undersigned by telephone.

Respectfully submitted,



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